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FILED
03 APR 21 PM 5:01
RICHARD W. KIRKING
NORTHERN DISTRICT COURT
CALIFORNIA
[Handwritten signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LARRY PRUNTY

Case No. *CV 08* *2070*

Petitioner,

v.

LARRY SCRIBNER, Warden,

Respondent.)

) REQUEST TO STAY HABEAS CORPUS
PROCEEDINGS WHILE PETITIONER
FINISHES EXHAUSTING STATE
REMEDIES

MMC
(PR)

Petitioner respectfully requests that this Court stay claims three and four (pp. 32-40) of the instant petition while Petitioner finishes exhausting claims one and two (pp. 1-31) in the state courts. (See Rhines v. Weber, (2005) 544 U.S. 269; Pace v. Diguglio, (2005) 544 U.S. 408, 416.)

This Request is based upon the attached Memorandum of Points and Authorities, and the papers and files of the case.

Respectfully submitted,

Dated: March 8, 08

[Signature]
Larry Prunty
Petitioner In Propria Persona

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 THE DISTRICT COURT SHOULD STAY PETITIONER'S
 4 EXHAUSTED CLAIMS (3 & 4) WHILE HE EXHAUSTS
 5 THE UNEXHAUSTED CLAIMS (1 & 2) IN THE STATE
 6 COURTS

7 A district court will dismiss a state prisoner's petition for
 8 writ of habeas corpus unless it appears that the prisoner has ex-
 9 hausted available state remedies. In Rose v. Lundy,¹ the United
 10 States Supreme Court spoke directly to state prisoners on this
 11 point: "before you bring any claims to federal court, be sure that
 12 you first have taken each one to state court."² However, when faced
 13 with a "mixed" petition, that is, a petition with both exhausted
 14 and unexhausted claims, a district court may stay and abey the ex-
 15 hausted claims while the Petitioner diligently exhausts the unex-
 16 hausted claims in state court. See Rhines v. Weber.³ This procedure
 17 is not uncommon, and is used most commonly by prisoners trying to
 18 "protect" their exhausted claims from statutory time limitations.
 19 See Pace v. Diguglielmo.⁴

20 Here, Petitioner has filed the instant Petition to protect
 21 his already exhausted claims. Claims Three and Four (pages 32-40)
 22 were exhausted on direct appeal (see Federal Habeas Petition, Ex-
 23 hibit A for copy of petition for review to California Supreme
 24 Court); but Claims One and Two (pages 1-31) have not been exhaus-

25 1. (1982) 455 U.S. 509 102 S.Ct 1198 71 L.Ed.2d 379.

26 2. Id. at 520.

27 3. (2005) 544 U.S. 269 125 S.Ct 1528 161 L.Ed.2d 440.

28 4. (2005) 544 U.S. 408, 416 161 L.Ed.2d 669 125 S.Ct 1807.

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1 ted, in that appellate counsel failed to raise these claims on direct
 2 appeal, and are being raised for the first time in Sacramento
 3 County Superior Court by way of petition for writ of habeas corpus.
 4 (See attached state habeas petition, pages 1-31 for unexhausted
 5 claims.)

6 That Petitioner felt it necessary to protect claims Three and
 7 Four in the instant Petition is the result of the Antiterrorism-
 8 and-Effective-Death-Penalty-Act's-one-year statute of limitations.⁵
 9 The California Supreme Court denied direct review in Petitioner's
 10 case on December 20, 2006 (see Federal Petition, Appendix B), be-
 11 cause no writ of certiori was filed, that decision became final
 12 90 days later on March 20, 2007 (see Bowen v. Roe);⁶ thus, under
 13 the statute of limitations, Petitioner has until March 20, 2008 to
 14 file a federal petition in this Court. See Patterson v. Stewart.⁷

15 Accordingly, to make sure that Claims Three and Four are not
 16 procedurally barred, Petitioner finds it necessary to file the
 17 instant Petition in this Court before the one-year statute of limi-
 18 tations is up, and request that this Court stay Claims Three and
 19 Four in abeyance wile Petitioner diligently exhausts Claims One
 20 and Two in state courts. Respectively, Petitioner mailed the atta-
 21 ched state Petition to the Sacramento Superior Court on the same
 22 day he mailed the instant Petition to this Court. (See state peti-
 23 tion, page 32, proof of service.) If the Superior Court denies the
 24

25 5. 28 U.S.C. § 2244(d)(1)(A).

26 6. 188 F.3d 1157, 1158-59 (9th Cir. 1999).

27 7. 251 F.3d 1243 (9th Cir. 2001).

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1 state petition, Petitioner will file that petition in the court of
2 appeals within 30 days of the superior court's judgment; and, if
3 the court of appeals also denies the state petition, Petitioner
4 will file that petition in the California Supreme Court within 30
5 days of that judgement; and, once the supreme court denies review,
6 Petitioner will file a perfected federal petition in this Court
7 within 30 days of that judgment.

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1 **CONCLUSION**

2 Petitioner respectfully requests that this Court stay habeas
3 corpus proceedings (Claims Three and Four) while Petitioner dili-
4 gently exhausts Claims One and Two in the state courts.

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